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may return a school to standard notification, certification and counting procedures at any time if standard procedures better suit the school's program needs. The school food authority will then notify the State agency.

(j) *Puerto Rico and Virgin Islands.* Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with § 245.4 or may opt for Provision 2 or Provision 3 provided the eligibility requirements as set forth in paragraphs (a), (b), (c), (d) and (e) of this section are met, as applicable.

(k) *Statistical income measurements.* Statistical income measurements that are used under this section to establish enrollment or participation base claiming percentages must comply with the standards outlined as follows:

(1) For enrollment based claiming percentages, statistical income measurements must meet the following standards:

(i) The sample frame shall be limited to enrolled students who have access to the school meals program;

(ii) A sample of enrolled students shall be randomly selected from the sample frame;

(iii) The response rate to the survey shall be at least 80 percent;

(iv) The number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are enrolled in the school, have access to the school meals program, and are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample; and

(v) To minimize statistical bias, data from all households that complete the survey must be used when calculating the enrollment based claiming percentages for paragraphs (c)(2)(iii)(A) and (e)(2)(iii)(A) of this section.

(2) For participation based claiming percentages, statistical income measurements must meet the following standards:

(i) The sample frame must be limited to students participating in the meal program for which the participation

based claiming percentages are being developed;

(ii) The sample frame must represent multiple operating days, as established through guidance, in the meal program for which the participation based claiming percentages are being developed;

(iii) A sample of participating students shall be randomly selected from the sample frame;

(iv) The response rate to the survey shall be at least 80 percent;

(v) The number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of participating students who are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample; and,

(vi) To minimize statistical bias, data from all households that complete the survey must be used when calculating the participation based claiming percentages for paragraphs (c)(2)(iii)(B) and (e)(2)(iii)(B) of this section.

(Sec. 9, Pub. L. 95-166, 91 Stat. 1336 (42 U.S.C. 1759a); secs. 805, and 819, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1773))

[Amdt. 19, 45 FR 67287, Oct. 10, 1980, as amended by Amdt. 23, 47 FR 14135, Apr. 2, 1982; 66 FR 48328, Sept. 20, 2001]

§ 245.10 Action by local educational agencies.

(a) Each local educational agency of a school desiring to participate in the National School Lunch Program, School Breakfast Program, or to provide free milk under the Special Milk Program, or to become a commodity-only school shall submit for approval to the State agency a free and reduced price policy statement. Once approved, the policy statement shall be a permanent document which may be amended as necessary, except as specified in paragraph (c) of this section. Such policy statement, as a minimum, shall contain the following:

(1) The official or officials designated by the local educational agency to make eligibility determinations on its behalf for free and reduced price meals or for free milk;

(2) An assurance that for children who are not categorically eligible for

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free and reduced price benefits the local educational agency will determine eligibility for free and reduced price meals or free milk in accordance with the current Income Eligibility Guidelines.

(3) The specific procedures the local educational agency will use in accepting applications from families for free and reduced price meals or for free milk. Additionally, if the school food authority has opted to determine eligibility for children from food stamp, FDPIR or TANF households based on documentation obtained from the State or local agency responsible for the Food Stamp, FDPIR or TANF Program, in lieu of an application, the school food authority shall include the specific procedures it will use to obtain the required documentation. Additionally, school food authorities that have implemented direct certification and that must provide households a notice of eligibility, as specified in §245.6(b), must also include in their policy statement a copy of the notice to households regarding their children's eligibility under the direct certification provision.

(4) A description of the method or methods to be used to collect payments from those children paying the full price of the meal or milk, or a reduced price of a meal, which will prevent the overt identification of the children receiving a free meal or free milk or a reduced price meal, and

(5) An assurance that the school will abide by the hearing procedure set forth in §245.7 and the nondiscrimination practices set forth in §245.8.

(b) The policy statement submitted by each local educational agency shall be accompanied by a copy of the application form to be used by the school and of the proposed letter or notice to parents.

(c) Each local educational agency shall amend its permanent free and reduced price policy statement to reflect substantive changes. Any amendment to a policy shall be approved by the State agency prior to implementation, or as provided in paragraph (e) of this section. Each year, if a local educational agency does not have its policy statement approved by the State agency, or FNSRO where applicable, by

October 15, reimbursement shall be suspended for any meals or milk served until such time as the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Furthermore, no commodities donated by the Department shall be used in any school after October 15, until such time as the local educational agency's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any local educational agency to the State agency, or FNSRO where applicable, is determined to be not in compliance with the provisions of this part, the local educational agency shall submit a policy statement that does meet the provisions within 30 days after notification by the State agency, or FNSRO where applicable.

(e) When revision of a local educational agency's approved free and reduced price policy statement is necessitated because of a change in the family-size income standards of the State agency, or FNSRO where applicable, or because of other program changes, the local educational agency shall have 60 days from the date the State agency announces the change in which to have its revised policy statement approved by the State agency, or FNSRO where applicable. In the event that a local educational agency's proposed revised free and reduced price policy statement has not been submitted to, and approved by, the State agency, or FNSRO where applicable, within 60 days following the public announcement by the State agency, reimbursement shall be suspended for any meals or milk served after the end of the 60-day period. No commodities donated by the Department shall be used in any school after the end of the 60-day period, until such time as the local educational agency's free and reduced price policy statement

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has been approved by the State agency, or FNSRO where applicable. Reimbursement may be allowed at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension once the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Pending approval of a revision of a policy statement, the existing statement shall remain in effect.

(Sec. 8, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95-627, 92 Stat. 3619 (42 U.S.C. 1772); 44 U.S.C. 3506; sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 6, 39 FR 30339, Aug. 22, 1974; Amdt. 8, 40 FR 57208, Dec. 8, 1975; Admt. 13, 44 FR 33049, June 8, 1979; 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983; 64 FR 50744, Sept. 20, 1999; 64 FR 72474, Dec. 28, 1999; 72 FR 63796, Nov. 13, 2007]

§ 245.11 Action by State agencies and FNSROs.

(a) Each State agency, or FNSRO where applicable, shall, for schools under its jurisdiction:

(1) As necessary, each State agency or FNSRO, as applicable, shall issue a prototype free and reduced price policy statement and any other instructions to ensure that each local educational agency as defined in § 245.2 is fully informed of the provisions of this part. If the State elects to establish for all schools a maximum price for reduced price lunches that is less than 40 cents, the State shall establish such price in its prototype policy. Such State shall then receive the adjusted national average factor provided for in § 210.4(b); (2) prescribe and publicly announce by July 1 of each fiscal year, in accordance with § 245.3(a), family-size income standards. Any standards prescribed by FNSRO with respect to nonprofit private schools shall be developed by FNSRO after consultation with the State agency.

(a-1) When a revision of the family-size income standards of the State agency, or FNSRO where applicable, is necessitated because of a change in the Secretary's income poverty guidelines or because of other program changes, the State agency shall publicly an-

nounce its revised family-size income standards no later than 30 days after the Secretary has announced such change.

(b) State agencies, and FNSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of § 245.5.

(c) Each State agency, or FNSRO where applicable, shall instruct local educational agencies under their jurisdiction that they may not alter or amend the eligibility criteria set forth in an approved policy statement without advance approval of the State agency, or FNSRO where applicable.

(d) Not later than 10 days after the State agency, or FNSRO where applicable, announces its family-size income standards, it shall notify local educational agencies in writing of any amendment to their free and reduced price policy statements necessary to bring the family-sized income criteria into conformance with the State agency's or FNSRO's family-size income standards.

(e) Except as provided in § 245.10, the State agency, or FNSRO where applicable, shall neither disburse any funds, nor authorize the distribution of commodities donated by the Department to any school unless the local educational agency has an approved free and reduced price policy statement on file with the State Agency, or FNSRO where applicable.

(f) Each State agency, or FNSRO where applicable, shall, in the course of its supervisory assistance, review and evaluate the performance of local educational agencies and of schools in fulfilling the requirements of this part, and shall advise local educational agencies of any deficiencies found and any corrective action required to be taken.